



## National Highway Traffic Safety Administration

[Docket No. NHTSA-2022-0033]

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Request for Comment; Information Collection Request: Criminal Penalty Safe Harbor Provision

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice and request for comments on a request for reinstatement of a previously approved information collection.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) summarized below will be submitted to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden. This collection of information for which NHTSA intends to seek OMB approval concerns NHTSA's Criminal Penalty Safe Harbor Provision. It is a reinstatement of a previously approved information collection. A Federal Register Notice with a 60-day comment period soliciting comments on the following information collection was published on June 29, 2022. No comments were received.

**DATES:** Comments must be submitted on or before **INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER**.

**ADDRESSES:** Written comments and recommendations for the proposed information collection, including suggestions for reducing burden, should be submitted to the Office of Management and Budget at [www.reginfo.gov/public/do/PRAMain](https://www.reginfo.gov/public/do/PRAMain). To find this particular information collection, select "Currently under Review – Open for Public Comment" or use the search function.

**FOR FURTHER INFORMATION CONTACT:** For additional information or access to background documents, contact Daniel Rabinovitz, Office of the Chief Counsel, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590, or via email at [Daniel.Rabinovitz@dot.gov](mailto:Daniel.Rabinovitz@dot.gov). Please identify the relevant collection of information by referring to its OMB Control Number (2127-0609).

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501 *et seq.*), a Federal agency must receive approval from OMB before it collects certain information from the public and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. In compliance with these requirements, this notice announces that the following information collection request will be submitted to OMB.

**Title:** Criminal Penalty Safe Harbor Provision

**OMB Control Number:** 2127-0609

**Form Number(s):** N/A

**Type of Request:** Request for reinstatement of a previously approved information collection.

**Type of Review Requested:** Regular

**Length of Approval Requested:** 3 years from date of approval

**Summary of the Collection of Information:**

Section 5 of the Transportation Recall Enhancement, Accountability, and Documentation (“TREAD”) Act (Pub. L. No. 106-414), codified at 49 U.S.C. 30170, notes that 18 U.S.C. 1001 provides for criminal liability in circumstances where a person had the intention of misleading the Secretary of Transportation (Secretary) regarding safety-related defects in motor vehicles or motor vehicle equipment that caused death or serious bodily injury. Section 30170 also contains a “safe harbor” provision that allows a person to avoid criminal penalties if that person lacked knowledge at the time of the violation that the violation would result in an accident causing death or serious bodily injury and if that person corrects any improper reports or failure to report to the Secretary (NHTSA by delegation) within a reasonable time. As required by Section 5 of the

TREAD Act, NHTSA published a final rule to implement the “safe harbor” provision and establish what constitutes a “reasonable time” and a sufficient manner of “correction,” as they apply to the “safe harbor” from criminal penalties. 66 FR 38380 (July 24, 2001). The rule is codified at 49 CFR 578.7.

A respondent that seeks “safe harbor” under § 30170 and 49 CFR 578.7 must sign and submit to NHTSA a dated document identifying: (1) each previous improper report, and each failure to report as required under 49 U.S.C. 30166, including a regulation, requirement, request or order issued thereunder, for which protection is sought; and (2) the specific predicate under which the improper or omitted report should have been provided. Respondents must submit the complete and correct information that was required to be submitted but was improperly submitted or was not previously submitted, including relevant documents that were not previously submitted, or, if the person cannot do so, provide a detailed description of that information and/or the content of those documents and the reason why the individual cannot provide them to NHTSA (e.g., the information or documents are not in the individual’s possession or control).

**Description of the Need for the Information and Proposed Use of the Information:**

Not only is this information collection required by statute, it also helps NHTSA further its mission. Without this information collection, NHTSA would not have a way to accept submissions from persons seeking “safe harbor.” This process serves to encourage persons to correct violations and submit corrections of any improper reports or failures to report, thereby increasing the likelihood of NHTSA receiving information about safety related defects. NHTSA anticipates using the information collection to evaluate a person’s request for protection from criminal prosecution and to aid in the identification of potential safety defects in motor vehicles and motor vehicle equipment. However, no information has been collected since NHTSA issued the implementing regulation at 49 CFR 578.7 in an interim final rule on December 26, 2000 (65 FR 81419).

**60-Day Notice:**

A Federal Register notice with a 60-day comment period soliciting public comments on the following information collection was published on June 29, 2022 (87 FR 38822). No comments were received.

**Affected Public:** Those affected are motor vehicle and motor vehicle equipment manufacturers, including officers or employees thereof, and other persons who respond to or have a duty to respond to an information collection pursuant to 49 U.S.C. 30166 or a regulation, requirement, request, or order issued thereunder. The information collection applies to persons who seek “safe harbor” under § 30170. In order to qualify, a respondent must: (1) at the time of the violation, not know that the violation would result in an accident causing death or serious bodily injury; and (2) correct any improper reports or failure to report within a reasonable time.

**Estimated Number of Respondents:** One.

**Frequency:** As needed basis.

**Number of Responses:** None.

**Estimated Total Annual Burden Hours:** Two hours annually.

The agency has received no reports from entities since this information collection was first put into place. However, to account for the possibility of receiving submissions in the future, NHTSA estimates that one person per year will submit a report under this collection of information. NHTSA also estimates that a maximum of two hours would be needed to gather and provide the information. Thus, NHTSA estimates that two burden hours a year would be spent on this collection of information.

To calculate the labor cost associated with submitting the collection of information, NHTSA looked at wage estimates for the type of personnel involved with compiling and submitting the documents. NHTSA estimates the total labor costs associated with these burden hours by looking at the average wage for Management Occupations. The Bureau of Labor Statistics (BLS) estimates that the average hourly wage for Management Occupations

(BLS Occupation code 11-0000) in the Management of Companies and Enterprises Industry is \$76.47.<sup>1</sup> The Bureau of Labor Statistics estimates that private industry workers' wages represent 70.5% of total labor compensation costs.<sup>2</sup> Therefore, NHTSA estimates the hourly labor costs to be \$109.24 for BLS Occupation code 11-0000. NHTSA likewise estimates the total labor cost associated with the two burden hours to be \$218.48. Table 1 provides a summary of the estimated burden hours and labor costs associated with those submissions.

**Table 1: Burden Estimates**

Annual Responses	Estimated Burden Per Response	Average Hourly Labor Cost	Labor Cost Per Submission	Total Burden Hours	Total Labor Costs
1	2 hours	\$74.96	\$109.24	2	\$218.48

**Estimated Total Annual Burden Cost: \$9.65.**

Assuming the respondent uses the U.S. Postal Service, NHTSA estimates that each mailed response is estimated to cost \$9.65 (priority flat rate envelope from USPS). Accordingly, NHTSA estimates the total annual costs for this information collection to be \$9.65 (1 submission × \$9.65). If the respondent emails the report to NHTSA, the cost may be less than \$9.65.

**PUBLIC COMMENTS INVITED:** You are asked to comment on any aspects of this information collection, including: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to

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<sup>1</sup> See National Industry-Specific Occupational Employment and Wage Estimates, NAICS 336100 - Motor Vehicle Manufacturing, available at [https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm) (accessed Jan. 27, 2023).

<sup>2</sup> See Table 1. Employer Costs for Employee Compensation by ownership (Sept. 2022), available at <https://www.bls.gov/news.release/ecec.t01.htm> (accessed Jan. 27, 2023).

minimize the burden of the collection of information on respondents, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**AUTHORITY:** The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29A.

**K. John Donaldson,**

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